

REMARKS

Reconsideration of the present application is respectfully requested. Claims 1-8, 10-12 have been amended, claim 9 has been cancelled and claims 13-20 have been added.

The drawings were objected to because feature number 20 had been used to designate two different features. The specification and drawings have been amended to eliminate double use of the numeral 20. These amendments introduce no new matter and are supported by the original filing. More specifically, the specification and drawings have been amended to particularly identify the reference number for the "outlet pipe" as 50. Withdrawal of the objection to the drawings is respectfully requested.

Claims 2-9 and 11-12 were objected to because of minor informalities. The claims have been amended to reflect the phrase "The apparatus as claimed in" or "The method of assembling." Withdrawal of the objection to claims 2-9 and 11-12 is respectfully requested.

Claim 1 was provisionally rejected under the nonstatutory obviousness type double patenting rejection. The Applicant respectfully requests that the response to the nonstatutory obviousness type double patenting rejection be held in abeyance until the claim has been allowed.

Claims 10-12 were rejected under 35 USC § 101 based upon statutory double patenting. More specifically, claims 10-12 were rejected under 35 USC § 101 as claiming the same invention as that of claims 9-11 of United States Patent No.

6,658,846. Claim 10 has been amended. Withdrawal of the 35 USC § 101 rejection of claims 10-12 is respectfully requested.

Claims 1 and 2 were rejected under 35 USC § 102 as being anticipated by United States Patent No. 5,033,592 to Metzelfeld. Applicant respectfully traverses the § 102 rejection of these claims. It is well settled that the Commissioner, through the Examiner, bears the initial duty of supplying the factual basis supporting a rejection of a patent application, including a rejection under 35 U.S.C. § 102. See, *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967). Not only does a rejection founded under 35 U.S.C. § 102 “require[s] the disclosure in a single prior art reference of each element of the claim under consideration” (See, *W.L. Gore and Assocs. Inc. v. Garlock*, 220 USPQ 303, 313 (Fed. Cir. 1983)) but it further requires that “each and every element of the claimed invention [must be] arranged as in the claim.” See, *Lindemann Maschienfabrik GMBH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) “The identical invention must be shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.* 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

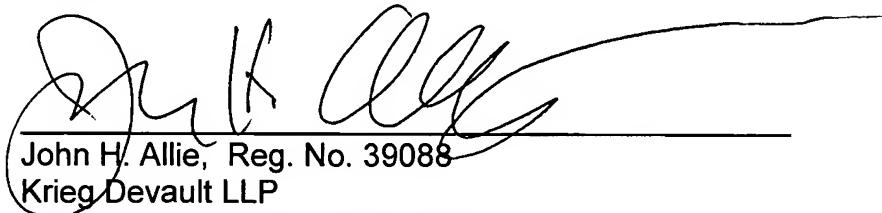
Independent claim 1, as amended, defines an apparatus including an actuator rod for a turbocharger pressure control assembly. In contrast the '592 reference discloses fluid pressure operated brake systems and more particularly [to] an apparatus for actuating an emergency brake on loss of fluid pressure in the brake system.” Col. 1, l. 7-10. There is noted the mention of the word turbine in the description of the prior art but there is no disclosure of anything related to a turbocharger system. The '592 reference does not disclose an actuator rod for a turbocharger pressure control assembly.

Independent claim 1, as amended, includes that the first and second portions of the actuator rod are pivotally joined to one another to allow a degree of relative pivotal motion between the two portions in at least one plane containing the axis of the elongate first portion and a lever arm is fixedly connected to the second portion of the actuator rod. The office Action recites that the first elongate portion is defined by feature number 30 and the second portion is defined by feature number 12. Therefore, the '592 reference does not disclose a lever arm fixedly connected to the second portion 12. Withdrawal of the § 102 rejection of claim 1 is respectfully requested for at least the above reasons.

Dependent claims 2-8 are believed at least allowable over the cited art as they depend from an independent claim that is allowable.

Reconsideration of the above-identified patent application is respectfully requested. Claims 1-8, and 10-20 are believed to be in condition for allowance, and such action is respectfully solicited. The Examiner is cordially invited to contact the undersigned by telephone to discuss any unresolved matters.

Respectfully submitted,



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Amendments to the Drawings

FIGS. 1 and 3 are amended to correct the accidental duplicate usage of reference number 20 as to the element "outlet pipe" as shown, for example, in FIG. 1 and replace with reference number 50 as to the element "outlet pipe." The correct usage of reference number 20 is shown, for example as to the element "valve stem," in FIG. 2. Applicants submit Replacement Sheets for FIGS. 1 and 3 according to 37 CFR 1.84(c).